

VOLUNTEERS AND PREVAILING WAGES

THE LAW

Under existing law, the use of volunteer labor is strictly limited. The Labor Code requires that prevailing wages be paid on public works projects that cost over \$1000.¹ "Public works" is defined as "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds..."² There is an exception for volunteer labor, but the volunteer labor exception has four restrictions, as follows:

For the limited purposes of this chapter, "public works" shall not include any otherwise covered work which meets all the following conditions:

- (a) The work is performed entirely by volunteer labor.
- (b) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sports groups or associations.
- (c) The work will not have an adverse impact on employment.
- (d) The work is approved by the Director of Industrial Relations [DIR] as meeting the requirements of this section.

For purposes of subdivision (c), the director shall request information on whether or not the work will have an adverse impact on employment from the appropriate local or state organization of duly authorized employee representatives of workers employed on public works.³

Looking at DIR's posted decisions on volunteer labor, on the web at <http://www.dir.ca.gov/DLSR/PrecedentialAlpha.htm>, it is abundantly clear that DIR would find that volunteer labor used in nonpoint source pollution control, watershed, and restoration activities was subject to prevailing wage requirements. For example, in May 2001, DIR found that minor landscape improvements including aeration, top dressing, overseeding and fertilizing of a school football field performed by some of the high school students did not meet the requirements of the Labor Code exception for volunteer labor. (See <http://www.dir.ca.gov/dlsr/Coverage/2000-082.pdf>.) DIR found that such activities required payment of prevailing wages.

The penalties for not paying prevailing wages include repayment of such wages plus a penalty, as well as possible criminal liability for everyone involved. (Labor Code §§ 1775, 1777.)

¹ Labor Code § 1771.

² Labor Code § 1720. The Department of Industrial Relations (DIR) has determined that this provision covers grant agreements. (DIR letter to Martin Couwenberg dated Nov 23, 1998 at <http://www.dir.ca.gov/dlsr/Coverage/98-005.pdf>.)

³ Labor Code § 1720.4.

EXAMPLES OF VOLUNTEER LABOR THAT WOULD LIKELY BE SUBJECT TO PREVAILING WAGE REQUIREMENTS

- ◆ Willow staking
- ◆ Spreading seeds and mulch
- ◆ Planting shrubs
- ◆ Operating heavy equipment
- ◆ Site cleanup
- ◆ Off-hauling garbage
- ◆ Planting vegetation
- ◆ Aeration of a field
- ◆ Top dressing of a field
- ◆ Overseeding and fertilizing a field
- ◆ Removal of invasive/exotic vegetation
- ◆ Stream bank stabilization/restoration (mulching, planting native vegetation, etc.)
- ◆ Instream restoration (sediment, trash, and structure removal)
- ◆ “hands-on” Student projects led by volunteers, depending on the project
- ◆ Any and all “pre-construction” work, including inspection and land surveying work, if it’s pre-construction.

If you have any questions regarding these requirements, please contact Mr. Scott Couch with the State Water Resources Control Board at (916) 341-5658 or by email at scouch@swrcb.ca.gov.